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TO: Examiner Erma C. Cameron	FROM: Howard A. MacCord, Jr. / Reg. No. 28,639
ORGANIZATION/FIRM: US PTO / Art Unit 1762	DATE: July 11, 2005
FAX NUMBER: (703) 872-9306	RECIPIENT'S PHONE NUMBER:
TOTAL # OF PAGES (Including Cover): 3	YOUR E-MAIL ADDRESS:
RE: RESPONSE TO RESTRICTION REQUIREMENT; Serial No. 10/696,484; Filed October 29, 2003; Confirmation No. 6978; For: TREATED INHERENTLY FLAME RESISTANT POLYESTER FABRICS; Our File No. 2250-13A	

NOTES/COMMENTS:

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Smith
Serial No. 10/696,484
Filed: October 29, 2003
Confirmation No.: 6978
For: TREATED INHERENTLY FLAME RESISTANT POLYESTER FABRICS

Examiner: Erma C. Cameron
Art Unit: 1762

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir

RESPONSE TO RESTRICTION REQUIREMENT

In response to the Office Action mailed July 1, 2005, Applicant hereby elects claim 30 as the species for prosecution in the above-identified application. The Commissioner is hereby authorized to charge any fees which may be required to Deposit Account 501923.

Although applicant has complied with the requirement for election, such requirement is respectfully traversed. Claim 25 specifies that the flame retardant is a phosphonate, and claim 26's recitation of cyclic phosphonate and claim 27's recitation of that the flame retardant is Flame Retardant 50 are species and subspecies, respectively, of the generic claim 25.

Similarly, as to claims 30, 31 and 32, claim 31 claims a more narrowly defined molecularly bound antimicrobial agent. And, AEM 5700™ is an organosilane that is a molecularly bound antimicrobial agent.

Again, as to claims 36 and 37, Zonyl 7040™ is a specific fluorochemical fluid repellent.

Accordingly, it is believed that the office action's election of species requirements are based on factual errors, so that they should not be needed. Moreover, applicant is confident

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that the examiner will find the generic claim 42 is allowable, making the election of species moot.

Also, it is pointed out that the Examiner's authority to require an election of species flows from 37 CFR § 1.146 that provides that such elections may be required upon a finding that:

- 1) the identified species are protected by claims that are patentably distinct, or
- 2) that the application contains claims directed to more than a reasonable number of species.

The Office Action includes no showing that the claims are patentably distinct. (In making this point applicant is not arguing that they are not patentably distinct, but is making the point that the burden of proof is on the examiner, and no such proof or argument has been provided). Also, the examiner has made no showing of the unreasonableness of the number of species protected by applicant's claims. Thus, applicant respectfully traversed the restriction requirement in its entirety.

Respectfully submitted,



Howard A. MacCord, Jr.
Registration No. 28,639
MacCord Mason PLLC

Date: July 11, 2005
File No.: 2250-13A

CERTIFICATE OF TRANSMISSION

I HEREBY CERTIFY THAT THIS DOCUMENT IS
BEING FACSIMILE TRANSMITTED TO THE
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ART UNIT 1762 ON July 11, 2005 (Date of Deposit)

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